

MONTANA LEGISLATIVE HISTORY

Chapter 61 19 87

Bill H 30 S _____ Original bill & history ☒ C

H. Committee on Business & Labor

S. Committee on Business & Labor

Hearing Date(s) 1/7 X C

Hearing Date(s) 1/29 X C

1/9 X C

_____ C

_____ C

_____ C

_____ C

_____ C

Date Out _____ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE FINAL STATUS

3/13	2ND READING PASSED	93	0
3/14	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
3/16	REFERRED TO STATE ADMINISTRATION		
3/25	HEARING		
3/25	COMMITTEE REPORT--BILL CONCURRED		
4/01	2ND READING CONCURRED	49	0
4/02	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
4/08	SIGNED BY SPEAKER		
4/09	SIGNED BY PRESIDENT		
4/09	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 467 EFFECTIVE DATE: 10/01/87		

HB 30 INTRODUCED BY KITSELMAN RESPONSIBILITIES OF BEER WHOLESALER

1/05	INTRODUCED		
1/05	REFERRED TO BUSINESS & LABOR		
1/07	HEARING		
1/09	COMMITTEE REPORT--BILL PASSED AS AMENDED		
1/12	REREFERRED TO BUSINESS & LABOR		
1/15	COMMITTEE REPORT--BILL PASSED AS AMENDED		
1/17	2ND READING PASSED	94	3
1/19	3RD READING PASSED	97	3
	TRANSMITTED TO SENATE		
1/21	REFERRED TO BUSINESS & INDUSTRY		
1/29	HEARING		
1/30	COMMITTEE REPORT--BILL CONCURRED		
2/03	2ND READING CONCURRED	50	0
2/05	3RD READING CONCURRED	44	5
	RETURNED TO HOUSE		
2/10	SIGNED BY SPEAKER		
2/11	SIGNED BY PRESIDENT		
2/11	TRANSMITTED TO GOVERNOR		
2/16	RETURNED WITH GOVERNOR'S AMENDMENTS		
2/19	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	90	2
2/20	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	86	5
	TRANSMITTED TO SENATE		
3/05	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	48	0
3/06	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	47	0
	RETURNED TO HOUSE		
3/10	SIGNED BY SPEAKER		
3/10	SIGNED BY PRESIDENT		
3/11	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 61 EFFECTIVE DATE: 5/01/87		

HB 31 INTRODUCED BY KITSELMAN CHANGING COMPOSITION OF PRIVATE SECURITY PATROLMEN

HOUSE BILL NO. 30
INTRODUCED BY KITSELMAN

IN THE HOUSE

JANUARY 5, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
JANUARY 9, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 10, 1987	PRINTING REPORT.
JANUARY 12, 1987	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON BUSINESS & LABOR.
JANUARY 15, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 16, 1987	PRINTING REPORT.
JANUARY 17, 1987	SECOND READING, DO PASS.
JANUARY 19, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 21, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
JANUARY 30, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
FEBRUARY 3, 1987	SECOND READING, CONCURRED IN.
FEBRUARY 5, 1987	THIRD READING, CONCURRED IN. AYES, 44; NOES, 5.
	RETURNED TO HOUSE.

IN THE HOUSE

FEBRUARY 6, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

FEBRUARY 10, 1987

ENROLLING REPORT.

SIGNED BY SPEAKER.

FEBRUARY 11, 1987

SIGNED BY PRESIDENT.

DELIVERED TO GOVERNOR.

FEBRUARY 16, 1987

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

FEBRUARY 19, 1987

SECOND READING, GOVERNOR'S RECOM-
MENDED AMENDMENTS CONCURRED IN.

FEBRUARY 20, 1987

THIRD READING, GOVERNOR'S RECOM-
MENDED AMENDMENTS CONCURRED IN.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 5, 1987

SECOND READING, GOVERNOR'S RECOM-
MENDED AMENDMENTS CONCURRED IN.

MARCH 6, 1987

THIRD READING, GOVERNOR'S RECOM-
MENDED AMENDMENTS CONCURRED IN.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 7, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

BUSINESS & LABOR COMMITTEE

50TH LEGISLATIVE SESSION

1987

Committee Members

District

Rep. Les Kitselman, Chairman	95
Rep. Fred Thomas, Vice Chairman	62
Rep. Bob Bachnini	14
Rep. Ray Brandewie	49
Rep. Jan Brown	46
Rep. Ben Cohen	3
Rep. Jerry Driscoll	92
Rep. William Glaserl	98
Rep. Larry Grinde	30
Rep. Stella Jean Hansen	57
Rep. Tom Jones	4
Rep. Lloyd McCormick	38
Rep. Gerald Nisbet	35
Rep. Bob Pavlovich	70
Rep. Bruce Simon	91
Rep. Clyde Smith	5
Rep. Charles Swysgood	73
Rep. Norm Wallin	78

Secretary

Elsie Sebens-Armstrong

Staff

Paul Verdon

STATUS SHEET

50TH LEGISLATIVE SESSION

BUSINESS AND LABOR

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
22	1/8/87	1/8/87	1/8/87			1/8/87					
30	1/7/87	1/7/87	1/9/87			1/9/87					
31	1/9/87	1/9/87	1/16/87			1/16/87					
34	1/6/87	1/6/87	1/6/87	1/6/87							
41	1/7/87	1/7/87	1/7/87			1/7/87					
44	1/6/87	1/6/87	1/6/87				1/6/87				
51	1/13/87	1/13/87	1/14/87	1/14/87							
52	1/13/87	1/13/87	tabled 2/11/87								
54	1/02/87	2/16/87	tabled 2/16/87								
66	1/5/87	2/19/87	2/20/87			2/20/87					
67	1/5/87	1/23/87	1/28/87			1/28/87					
68	1/6/87	1/9/87	1/16/87			1/16/87					
80	1/12/87	1/19/87	1/22/87			1/22/87					
94	1/12/87	1/14/87	2/10/87			2/10/87					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date JANUARY 7, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

HOUSE BILL NO. 30

INTRODUCED BY KITSELMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING TRANSFER OF BEER BETWEEN LICENSED PREMISES; CLARIFYING WHOLESALERS' RESPONSIBILITIES IN THE DISTRIBUTION OF BEER; DEFINING "DISTRIBUTE" WITH REGARD TO BEER AND TABLE WINE; AMENDING SECTIONS 16-3-301, 16-4-103, AND 16-4-108, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-3-301, MCA, is amended to read:

"16-3-301. Unlawful purchases, transfers, sales, or deliveries. (1) It ~~shall--be~~ is unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer from one licensed premises or other facility to any other licensed premises owned by the licensee.

~~(2)(3)~~ It ~~shall--be~~ is unlawful for any licensee, his or her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 19 years of age;

(b) any intoxicated person or any person actually, apparently, or obviously intoxicated.

~~(3)(4)~~ Any person under 19 years of age or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from such licensee ~~shall--be~~ is equally guilty with said licensee and ~~shall~~, upon conviction thereof, be is subject to the penalty provided in 45-5-624; ~~provided;--however;--that.~~ However, nothing herein contained ~~shall~~ may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

~~(4)(5)~~ It ~~shall--be~~ is further mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard as issued by the department stating fully the consequences for violations of the provisions of this code by persons under 19 years of age."

NEW SECTION. Section 2. "Distribute" defined. As used in [sections 3 and 4], 16-4-103, and 16-4-108, "distribute" means to deliver beer or wine to a retailer's premises licensed to sell beer or table wine.

NEW SECTION. Section 3. Dock sales restricted. A beer wholesaler or a table wine distributor may not deliver beer or wine to a licensed retailer at any location other than the retailer's licensed premises, except that a retailer

located within the territory for which a wholesaler has been appointed to distribute a brand may personally or through his employee obtain from the wholesaler's warehouse quantities of beer not exceeding three barrels in packaged or draft form.

NEW SECTION. Section 4. Wholesalers' service obligations -- applicability. (1) A wholesaler appointed to distribute a brand of beer within a territory specified by agreement pursuant to 16-3-221(3) shall call on and offer that brand to at least 75% of the retailers within that territory at least every 3 weeks.

(2) If a retailer's account with a wholesaler is current as required under 16-3-243, the wholesaler may not refuse to sell the retailer any brand of beer for which the wholesaler has been appointed for the territory in which the retailer is located. The wholesaler shall offer to deliver the beer to such retailer at least every 3 weeks.

(3) This section applies to all beer distribution agreements entered into, assigned, or amended after July 1, 1986. It does not apply to a distribution agreement for a named brand entered into before July 1, 1986, but does not prohibit a brewer party to such an agreement from requiring the appointed wholesaler to fulfill similar service obligations in the territory.

Section 5. Section 16-4-103, MCA, is amended to read:

"16-4-103. Wholesalers' licenses -- application for and issuance -- subwarehouses -- imported beer handled through warehouse or subwarehouse. (1) Any person desiring to sell and distribute beer as a wholesaler under the provisions of this code shall apply to the department for a license to do so and tender with his application the license fee provided for, and the department is hereby empowered, authorized, and directed to issue wholesale licenses to qualified applicants in accordance with the provisions of this code. Such license shall be at all times prominently displayed in the place of business of such wholesaler.

(2) An applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house, or warehouse for the receiving of, storage, handling, and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler is entitled to only one wholesale license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only, in Montana, for each wholesale licensee. The duplicate license shall at all times be prominently displayed at said subwarehouse.

(3) If the applicant is a foreign corporation, the

1 (4) As used in subsection (1), "distribute" has the
2 meaning given to it in [section 2]."

3 Section 6. Section 16-4-108, MCA, is amended to read:

4 "16-4-108. Wine distributor's license. (1) Any person
5 desiring to sell and distribute table wine at wholesale to
6 retailers under the provisions of this code shall apply to
7 the department of revenue for a license to do so and shall
8 tender with his application the annual license fee of \$400
9 and the department may issue licenses to qualified
10 applicants in accordance with the provisions of this code.

11 (2) All table wine distributors' licenses issued in
12 any year expire on June 30 at midnight of such year.

13 (3) No license fee may be imposed upon table wine
14 distributors by a municipality or any other political
15 subdivision of the state.

16 (4) The license shall be at all times prominently
17 displayed in the place of business of such table wine
18 distributor.

19 (5) An applicant shall have a fixed place of business,
20 sufficient capital, the facilities, storehouse, receiving
21 house or warehouse for the receiving of, storage, handling,
22 and moving of table wine in large and jobbing quantities for
23 distribution and sale in original packages to other licensed
24 table wine distributors or licensed retailers. Each table
25 wine distributor is entitled to only one wholesale table

1 wine license, which license shall be issued for his
2 principal place of business in Montana. A duplicate license
3 may be issued for one subwarehouse only in Montana for each
4 table wine distributor's license. The duplicate license
5 shall at all times be prominently displayed at said
6 subwarehouse. A table wine distributor may also hold a
7 license to sell beer at wholesale but shall not hold or have
8 any interest, direct or indirect, in any license to sell
9 beer, wine, or liquor at retail.

10 (6) If the applicant is a foreign corporation, the
11 corporation must be authorized to do business in Montana.

12 (7) As used in subsection (1), "distribute" has the
13 meaning given to it in [section 2]."

14 NEW SECTION. Section 7. Extension of authority. Any
15 existing authority of the department of revenue to make
16 rules on the subject of the provisions of this act is
17 extended to the provisions of this act.

18 NEW SECTION. Section 8. Codification instruction.
19 Sections 2 through 4 are intended to be codified as an
20 integral part of Title 16, chapter 3, part 2, and the
21 provisions of Title 16, chapter 3, part 2, apply to sections
22 2 through 4.

23 NEW SECTION. Section 9. Effective date. This act is
24 effective May 1, 1987.

-End-

STANDING COMMITTEE REPORT

JANUARY 9

19 27

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 30

☒ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

REP. LES KITZELMAN

Chairman

RESPONSIBILITIES OF BEER WHOLESALER

AMENDMENTS AS FOLLOWS:

1) Page 1, line 12

Following: line 11

Insert: NEW SECTION. Section 1. Purposes. The legislature finds and declares that the purposes of 16-3-221 through 16-3-226 and (this act) are to assure continued interbrand competition in malt beverage sales through competing independent wholesalers and to assure breweries the ability to protect the reputations of their products through quality control arrangements." Renumber: subsequent sections

2) Page 2, line 25

Following: "retailer"

Insert: ", other than an all-beverage licensee,"

3) Page 3, line 5

Following: "form."

Insert: "An all-beverage licensee may upon presentation of his license personally obtain from any wholesaler's warehouse such quantities of beer as he and the wholesaler may agree to buy and sell."

4) Page 6, line 23

Following: line 22

Insert: "NEW SECTION. Section 10. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent section

WB
FIRST

WHITE

reading copy ()
color

HOUSE BILL 30	)	Statement in Support by
Clarifying Wholesalers'	)	Roger Tippy, Exec. Secretary,
Responsibilities in the	)	Montana Beer & Wine Wholesalers'
Distribution of Beer	)	Association.

The testimony of these beer wholesalers is an expression of grave concern for the future of their businesses. They are not here today to ask you, the lawmakers, to give them anything beyond the status quo. Pass this bill and they can continue to operate as they have for many years. Should the bill fail and the present Department of Revenue interpretations prevail, there is nothing to stop an Indiana-type situation from developing here. The loss of jobs in wholesale delivery would not be replaced by jobs as good in the retail sector, and the economy would be the poorer.

Let's talk about section 4 -- the part of the bill setting forth a wholesaler's service obligations to the retailers within his territory. This language restates present practice in almost all situations. As Mr. Lee told you, a wholesaler's sales people call on virtually 100% of the retailers in his territory every week. They sell and deliver to every retailer who is not delinquent.

We are worried about private label beers or imported beers for which a wholesaler is offered the exclusive distribution rights in a particular territory coupled with the brewer's condition that only certain selected retailers can buy this beer. Section 4 would prevent such unfair, exclusive dealing arrangements by requiring a non-discriminatory sales and delivery policy throughout the exclusive territory which present law requires.

The following set of questions and answers should cover most other aspects of the bill.

1. Q. What's the difference between a beer delivering job for a supermarket chain and the same job with a wholesaler?

A. The differences are pay and sometimes location. UM Professor Paul Polzin found the average wage in beer wholesaling in 1983 to be \$19,000, compared with an average of \$9,1000 in retail trade. And the management jobs in food retailing megafirms are likely to be out of state. After American Food Stores, Inc. purchased Buttreys, they moved 110 executive jobs out of Great Falls this year, down to Salt Lake City.

2. Q. What about the consumer's interests?

A. Consumers look for bargains and for quality. Stale of skunky beer is no bargain at any price. Beer is perishable and has a shelf life of two or three months at best. When supermarkets take over the quality control functions of the wholesalers, quality inevitably suffers. Quality control by wholesalers rather than by retailers has little effect on price.

3. Q. What does the first change in the law do?

A. It extends the current law, which prohibits a bar or independent mom and pop grocery from buying beer from another retailer, to retail chains. Without this change, the Department of Revenue would interpret the present law as allowing a chain to order truckloads of beer for one of its stores, then loading beer on its grocery trucks for distribution throughout its network in the state. That isn't being done now, but it could be done under the Department's interpretations.

4. Q. What do the amendments on dock sales or point of delivery mean?

A. They mean a retailer cannot pick up beer a truckload or more at a time at a wholesaler's warehouse. Retail chains began doing this in Indiana, and soon half the wholesalers in Indiana had gone out of business. Retailers would be able to pick up 3 barrels (about 41 cases) of any particular brand of beer at the wholesaler's warehouse if they needed to.

5. Q. What is the purpose of the section defining service obligations?

A. In 1974 the legislature required breweries to grant territorial franchises to their wholesalers. Since then, the Department of Revenue has issued inconsistent interpretations of what this means in terms of a wholesaler's obligation to the beer retailers in his territory. This section would set out some principles wholesalers believe to be fair. If a wholesaler has the exclusive right to distribute a brand in any part of the state, he should have to sell it to any properly licensed retailer whose credit is good. Some existing brewery appointments may contemplate less than full service in the territory; these would be "grandfathered."

6. Q. How would chain retailer assumption of large parts of the wholesaler's functions hurt taverns?

A. A wholesaler's labor costs per delivered case (or draft equivalent) are greater in taverns than in supermarkets. Wholesalers usually compute a standard markup based on the average labor cost to all retailers. Loss of supermarket accounts will raise the average labor cost per case and the markup to the remaining retail accounts. This will further increase the retail price difference between supermarkets and tavern beer.

Finally, we would ask you to insert a severability clause in the bill.

Thank you for your consideration of this important bill.

ROGER TIPPY (Tel: 442-4451)
P.O. Box 543, Helena, MT 59624

The amendment would take the following form:

Amend HB30, p. 6, line 23:

Following: line 22

Insert: NEW SECTION. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Renumber: subsequent section.

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

MONTANA SENATE

HOUSE BILL 30	)	Statement in Support by
Clarifying Wholesalers'	)	Roger Tippy, Exec. Secretary,
Responsibilities in the	)	Montana Beer & Wine Wholesalers'
Distribution of Beer	)	Association.

The testimony of these beer wholesalers is an expression of grave concern for the future of their businesses. They are not here today to ask you, the lawmakers, to give them anything beyond the status quo. Pass this bill and they can continue to operate as they have for many years. Should the bill fail and the present Department of Revenue interpretations prevail, there is nothing to stop an Indiana-type situation from developing here. The loss of jobs in wholesale delivery would not be replaced by jobs as good in the retail sector, and the economy would be the poorer.

Let's talk about section 4 -- the part of the bill setting forth a wholesaler's service obligations to the retailers within his territory. This language restates present practice in almost all situations. A wholesaler's sales people call on virtually 100% of the retailers in his territory every week. They sell and deliver to every retailer who is not delinquent.

We are worried about private label beers or imported beers for which a wholesaler is offered the exclusive distribution rights in a particular territory coupled with the brewer's condition that only certain selected retailers can buy this beer. Section 4 would prevent such unfair, exclusive dealing arrangements by requiring a non-discriminatory sales and delivery policy throughout the exclusive territory which present law requires.

The following set of questions and answers should cover most other aspects of the bill.

1. Q. What's the difference between a beer delivering job for a supermarket chain and the same job with a wholesaler?

A. The differences are pay and sometimes location. UM Professor Paul Polzin found the average wage in beer wholesaling in 1983 to be \$19,000, compared with an average of \$9,1000 in retail trade. And the management jobs in food retailing megafirms are likely to be out of state. After American Food Stores, Inc. purchased Buttreys, they moved 110 executive jobs out of Great Falls this year, down to Salt Lake City.

2. Q. What does the first change in the law do?

A. It extends the current law, which prohibits a bar or independent mom and pop grocery from buying beer from another retailer, to retail chains. Without this change, the Department of Revenue would interpret the present law as allowing a chain to order truckloads of beer for one of its stores, then loading beer on its grocery trucks for distribution throughout its network in the state. That isn't being done now, but it could be done under the Department's interpretations.

3. Q. What do the amendments on dock sales or point of delivery mean?

A. They mean a retailer cannot pick up beer a truckload or more at a time at a wholesaler's warehouse. Retail chains began doing this in Indiana, and soon half the wholesalers in Indiana had gone out of business. Retailers would be able to pick up 3 barrels (about 41 cases) of any particular brand of beer at the wholesaler's warehouse if they needed to.

4. Q. What is the purpose of the section defining service obligations?

A. In 1974 the legislature required breweries to grant territorial franchises to their wholesalers. Since then, the Department of Revenue has issued inconsistent interpretations of what this means in terms of a wholesaler's obligation to the beer retailers in his territory. This section would set out some principles wholesalers believe to be fair. If a wholesaler has the exclusive right to distribute a brand in any part of the state, he should have to sell it to any properly licensed retailer whose credit is good. Some existing brewery appointments may contemplate less than full service in the territory; these would be "grandfathered."

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A. A wholesaler's labor costs per delivered case (or draft equivalent) are greater in taverns than in supermarkets. Wholesalers usually compute a standard markup based on the average labor cost to all retailers. Loss of supermarket accounts will raise the average labor cost per case and the markup to the remaining retail accounts. This will further increase the retail price difference between supermarkets and tavern beer.

Thank you for your consideration of this important bill.

ROGER TIPPY (Tel: 442-4451)
P.O. Box 543, Helena, MT 59624

WITNESS STATEMENT

EXHIBIT #1
DATE 1/7/87
HB 30

NAME Bill Watkins BILL NO. 30
ADDRESS 1200 Shakespeare, Missoula, Montana 59801 DATE 1-07-87
WHOM DO YOU REPRESENT? Montana Beer & Wine Wholesalers Assn.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. A state law enacted in 1974 (code sections 16-3-221 and 16-3-222, see Exhibit A on the back of this statement) requires each brewery licensed to operate in Montana to appoint its wholesalers with the sole rights to distribute some or all of its brands of beer in a designated territory.
2. My company, Zip Beverage, holds such appointments from several breweries or importers for all or parts of six counties in the Missoula area. Our Anheuser-Busch, Inc. equity agreement (see Exhibit B attached to this statement) makes us responsible for distributing the Budweiser and Michelob beer brands in all of Missoula, Ravalli, Mineral, Sanders, and parts of Lake and Powell counties. By virtue of the law I mentioned, all beer wholesalers in Montana hold similar territorial appointments for their beer brands. There is no such law for the wines we carry.
3. Beer is a perishable product. The breweries code the date a can of beer is filled on the bottom in order that its shelf life can be determined. The wholesaler, in turn, is required to look at the code and see that that can is off each retailer's shelf within 90 to 110 days after the fill date. If we don't pull the old beer the consumer and the brand's reputation is harmed. Without the territorial franchise, quality control is impossible. The territorial responsibility system serves the public, but we need House Bill 30 to continue to provide quality beer to satisfied consumers.

- (a) sell or deliver beer to:
- a vendor;
 - any licensees who are entitled to purchase beer from a brewer under this code; or
 - the public; or
- (b) provide, without charge, its own products for consumption on licensed premises; or
- (c) do any one or more of such acts of sale and delivery of beer.

(2) No additional license fee may be imposed on a brewery providing without charge, its own products on its licensed premises for consumption at the premises.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; re-en. Sec. 2815, R.C.M. 1935; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969; amd. Sec. 1, Ch. 421, L. 1971; Sec. 4-317, R.C.M. 1947; amd. and redes. 4-3-206 by Sec. 53, Ch. 387, L. 1975; R.C.M. 1947, 4-3-206; amd. Sec. 2, Ch. 149, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (1)(b) and (2).

16-3-215 through 16-3-220 reserved.

16-3-221. Illegal acts by brewers or beer importers. It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

- coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state or any rules promulgated by the department;
- sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;
- designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and
- cancel or terminate, except for just cause or in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving the classification was reasonable and not arbitrary. After July 1, 1974, the provisions of 16-3-221 through 16-3-226 shall be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business

the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer.

History: En. 4-317.2 by Sec. 1, Ch. 322, L. 1974; Sec. 4-317.2, R.C.M. 1947; redes. 4-3-207 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-207; amd. Sec. 8, Ch. 19, L. 1985.

Compiler's Comments

1985 Amendment: Inserted "or beer importer" in 11 places with minor variations in phraseology.

16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler shall specifically set forth or contain the following:

- that the brewer or beer importer or any officer, agent, or representative of any brewer or beer importer and the wholesaler involved

determine the size or extent of the territory in which the products of the brewer or beer importer shall be sold.

Said territory will be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer importer.

- the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

- that the brewer or beer importer recognizes that the wholesaler is free to manage his business in the manner the wholesaler deems best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands he wishes to handle, to determine the effort and resources the wholesaler will exert to develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;

- a procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer or beer importer of said deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct said deficiencies, and that a reasonable period of time shall be given the wholesaler for rectification of said deficiencies prior to any notice of intent to terminate;

- a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise.

History: En. 4-317.3 by Sec. 2, Ch. 322, L. 1974; Sec. 4-317.3, R.C.M. 1947; redes. 4-3-208 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-208; amd. Sec. 9, Ch. 19, L. 1985.

Compiler's Comments

1985 Amendment: Inserted several references to "beer importer" and to "wholesaler and beer

importer" after "brewer" and "wholesaler and brewer".

16-3-223. Transfer of wholesaler's interest in business. A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person or to one or more members of his family or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation. Provided, however, the consent of the brewer or beer importer in

Anheuser-Busch, Inc.

Wholesaler Equity Agreement

Commencing on the date on the signature page on which Anheuser-Busch executes this Agreement, Anheuser-Busch, Inc. ("Anheuser-Busch") agrees to sell and the undersigned Wholesaler ("Wholesaler") agrees to buy such malt beverage products as are listed on the Wholesaler Information Sheet, Exhibit 1 hereto (such malt beverage products being herein referred to as "Products"), pursuant to the following terms and conditions:

1. TERRITORY

(a) Anheuser-Busch and Wholesaler recognize and agree that it is essential to their mutual objectives under this Agreement that Wholesaler at all times maintain the financial and competitive capabilities necessary to achieve efficient and effective distribution of Anheuser-Busch Products in Wholesaler's sales area and to assure continued protection of the high quality and integrity of Anheuser-Busch Products. In order to:

(i) enable Anheuser-Busch and Wholesaler to more effectively compete with the products of other brewers in Wholesaler's sales area;

(ii) assure that the quality and integrity of Anheuser-Busch Products are constantly maintained recognizing that such Products are perishable, that it is vitally important that over-age Products not be permitted to reach consumers and that such Products must at all times be handled properly;

(iii) induce and enable Wholesaler to make such investments in its operation and facilities as may be necessary or appropriate to maintain and enhance efficiency and effectiveness in Wholesaler's overall marketing efforts;

(iv) induce and enable Wholesaler to engage in marketing, advertising and promotional efforts in Wholesaler's sales area, provide full customer services, achieve maximum representation of all Anheuser-Busch Products in all licensed accounts in Wholesaler's sales area and actively promote and aggressively market the full range of Anheuser-Busch Products which are the subject of this Agreement;

(v) assure that Wholesaler develops and maintains adequate and effective local community relations and exercises full responsibility to the community in its operations;

(vi) foster, promote and maintain an efficient, viable and financially sound system of distribution of Anheuser-Busch Products to the benefit of Anheuser-Busch, its wholesalers and all purchasers of the Products; and

(vii) facilitate and enable compliance by Wholesaler with the Operating, Sales and Merchandising Standards set forth in Exhibit 9,

Anheuser-Busch and Wholesaler agree as follows:

Anheuser-Busch hereby appoints Wholesaler as the wholesale distributor of, and grants to Wholesaler the right to sell, the Products in the territory described in Exhibit 2 ("Territory") and agrees that it will not appoint another wholesaler for the Products sold by Wholesaler in the Territory. As used herein, the term "Wholesaler" shall not include any person or entity who is engaged exclusively in the sale of the Products for consumption outside the United States. Wholesaler hereby accepts said appointment and agrees to exercise its best efforts to promote, sell and service the Products in the Territory. Wholesaler agrees that it will not sell Products directly or indirectly to customers located outside the Territory; provided, however, that Wholesaler may, subject to the approval of Anheuser-Busch, sell Products to customers located in another wholesaler's territory if that wholesaler is unable for any reason to service its territory. Any breach of the provisions of the immediately preceding sentence shall give Anheuser-Busch the right to terminate this Agreement immediately in accordance with the provisions of paragraph 6 hereunder. Nothing contained herein shall prevent Wholesaler from selling Products to another duly authorized Anheuser-Busch wholesaler for the purpose of eliminating product shortages or inventory imbalances.

(b) If any of the provisions of subparagraph (a) above are or shall be prohibited under any lawful statute or regulation of any state, such provisions of subparagraph (a) shall not apply in such state and, in lieu thereof,

the provisions of this subparagraph (b) shall apply. In such event, Anheuser-Busch hereby appoints Wholesaler as the wholesale distributor of, and grants to Wholesaler the right to sell the Products in the Territory as Wholesaler's primary market area. Wholesaler hereby accepts said appointment and agrees to exercise its best efforts to promote, sell and service the Products in the Territory and further agrees that it shall be primarily responsible for servicing retail accounts in its primary market area with the Products and that it shall concentrate its efforts in that primary market area.

2. MANAGER OF WHOLESALER'S BUSINESS

Malt beverages are unique products sold at retail establishments for consumption off-premise and on-premise. Wholesaler relies upon Anheuser-Busch for the production of quality Products, for support in consumer advertising of such Products, and for the counsel and advice of Anheuser-Busch's field personnel in support of Wholesaler's efforts to achieve maximum market representation of Anheuser-Busch Products in Wholesaler's Territory. The sale of malt beverages requires highly personalized promotion and sales service efforts. Anheuser-Busch relies upon the personal efforts and capabilities of the manager of Wholesaler's operation to aggressively promote, sell and service Anheuser-Busch's Products. (The business of selling malt beverages at wholesale has generally proved to be more successful when the manager of such business has at least some ownership interest.) The parties therefore agree that this is a personal service contract and is entered into by Anheuser-Busch with Wholesaler in reliance upon and in consideration of the personal qualifications of the person identified on the Wholesaler Information Sheet, Exhibit 1 hereto, as Manager of Wholesaler's business.

Nothing contained in this Agreement shall be interpreted as giving to Manager any right to be retained in Wholesaler's employ or as interfering with or limiting the right of Wholesaler at any time in its sole discretion (without obtaining the approval of Anheuser-Busch) to terminate the employment of Manager or to change Manager's duties so that he is no longer managing the business. However, any such action by Wholesaler shall constitute "cessation of employment" of Manager as that term is used in paragraph 3(f) of this Agreement and shall impose on Wholesaler the obligation to follow the procedures set forth in paragraph 3 with respect to the designation of a Successor-Manager.

3. DESIGNATION OF SUCCESSOR-MANAGER

It is important to both Wholesaler and Anheuser-Busch that at such time as Manager becomes unable to or ceases to manage Wholesaler's business, there be a person available to assume the management of Wholesaler's business. In order to plan for such a contingency and to provide for continuity in the on-going management of Wholesaler's business involving the sale of Anheuser-Busch's Products, the parties agree to be governed by the following procedures:

(a) On the Wholesaler Information Sheet, which is attached hereto as Exhibit 1, Wholesaler has designated a Successor-Manager who, in Wholesaler's judgment, would be capable of managing Wholesaler's business at such time as Manager becomes unable or ceases to do so. Wholesaler may request a waiver of this requirement by submitting a statement to Anheuser-Busch which sets forth the specific reasons why such waiver is requested. Any such request for a waiver shall be submitted by Wholesaler at the time it returns this Agreement, signed by Wholesaler, to Anheuser-Busch. By signing this Agreement, Anheuser-Busch has approved such designation or, if no such designation is made, waived this requirement for what, in Anheuser-Busch's sole judgment, is good cause.

(b) In the event Manager becomes unable or ceases to manage Wholesaler's business, Wholesaler shall immediately notify Anheuser-Busch of said fact and the Successor-Manager shall immediately become Manager. If at any time Wholesaler does not have a Successor-Manager who has been approved by Anheuser-Busch, Wholesaler shall immediately notify Anheuser-Busch and, unless waived in writing by Anheuser-Busch for what, in Anheuser-Busch's sole judgment, is good cause, shall appoint a Successor-Manager in accordance with the procedures set forth in Exhibit 3.

#5
11/2/81
C

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

The first section amends present law which says a bar or other retailer cannot buy beer from another retailer — by extending this principle to the different outlets of a chain of retailers. If the Buttrays or Albertsons store in Butte runs out of Bud or Coors, I would like for them to call me instead of moving the beer down from their store in Helena or elsewhere.

THEY WERE TO BE USED FOR THE PURPOSES OF THE
FEDERAL GOVERNMENT. THIS BEING THE CASE, THE
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those participating in a safety driving program they are recognized with an appropriate premium reduction. He further stated that this bill does not mandate the actual premium reduction, it is requesting that the insurance company participate by recognizing the people who participate in a program to become better drivers, and not those who are involved in accidents or convicted of a traffic violation.

There being no further discussion by proponents or opponents, the hearing on HB 41 was closed.

HOUSE BILL NO. 30 - Responsibilities of Beer Wholesaler introduced by Representative Les Kitselman. Representative Kitselman stated that the bill prohibits the transfer of beer between licensed premises.

PROPONENTS

Bill Watkins, General Salesmanager with Zip Beverage, and Vice-President of Beer and Wine Wholesalers, Missoula. He stated that the state law enacted in 1974 requires each brewery licensed to operate in Montana to appoint its wholesalers with the sole rights to distribute some or all of its brands of beer in a designated territory. Without the territorial franchise, quality control is impossible is impossible, he said, also the territorial responsibility system serves the public, but we need House Bill No. 30 to continue to provide a quality product to consumers. See Exhibit No. 1.

Don Brokopp, Intermountain Distributing, Billings. Mr. Brokopp gave a history of the 3-tier system in Montana of the beer industry. He felt that HB 30 will clarify the present law.

Ardelle Watkins, Gusto Distributors of Havre. Ms. Watkins stated that if legislators do not clarify the 1985 interpretation by the Department of Revenue, the wholesalers feel tht it will affect their territorial rights and eventually many of them will go out of business. See Exhibit No. 2.

Chuck Lee, Lee Distributing Company, Kalispell and Libby. Mr. Lee stated that his company serves 318 retailers in Flathead and Lincoln Counties, and they call on most of them at least once a week, and the rest on a bi-weekly or on call. He also included with his testimony a copy of their order form that the salesman uses which shows how they can offer the imported beers and other low-volume brands to each account as well as their main brands. See Exhibit No. 3 and 4.

Jim Thompson, Thompson Distributing Company, Butte. He addressed the first section of HB 30 which amends the present law which bans a bar or other retailer from buying beer from another retailer. Under the Department of Revenue guidelines, they said it would be legal for a large retailer to trans-ship the beer within the state. The distributors would like to extend the law to include the larger chain outlets, because according to the contracts, the distributor is responsible for the products within their area. See Exhibit No. 5.

Roger Tippy, Executive Secretary and Attorney, Montana Beer and Wine Wholesalers Association, Helena. Mr. Tippy stated that the testimonies of the beer wholesalers is an expression of concern for the future of their businesses. He stated that if the bill were passed, they could continue to operate, but if the bill should fail and the present Department of Revenue interpretation would prevail, it would cause loss of jobs. He also suggested inserting a severability clause in the bill. He also introduced several other wholesalers that support the bill: Jack Devine, Great Falls, John Decker and Bill Decker, Billings, Bruce Watkins, Great Falls, and George Ellington, Conrad. See Exhibit No. 6.

Steve Browning, Amheuser-Bush Industries, Helena. Mr. Browning stated that Amheuser is a strong proponent for the three-tier system of breweries, wholesalers, and retailers. They feel it is important for the quality and distribution of the product that they maintain the three-tier system.

OPPONENTS

None.

There being no further discussion by proponents or opponents Vice Chairman Thomas asked for questions by the committee.

QUESTIONS

Representative Pavlovich asked Mr. Tippy if a tavern could borrow beer from another tavern if they run out, and Mr. Tippy responded that the existing code at the present time states that technically it can't be done; the code states purchase or acquire.

Representative Pavlovich also asked if a wholesaler could refuse to sell to a person during a strike situation or a personality conflict. Mr. Tippy responded that by the last interpretation by the Department of Revenue, the wholesaler is under no obligation to sell to anyone, and that section 4 addresses that problem by stating that if a retailer has

good credit standing, a wholesaler in that territory can't refuse to sell to that retailer.

Representative Pavlovich further questioned regarding a strike situation, if the tavern is required to buy from the wholesaler in his community and cannot go anywhere else to buy. Mr. Tippy responded that the bill would prevent buying from anyone else. Also in response to Representative Pavlovich's question regarding whether a distributor was allowed to sell another brand of beer in Montana and the wholesalers in Montana did not want to accept that brand of beer. Mr. Tippy responded that anyone who qualifies and has a wholesaling license can start up a new business.

Other questions were asked regarding imported beer, distributorship, and the questions listed in Mr. Tippy's testimony.

CLOSING

Representative Kitselman stated in his closing statement that currently there are approximately 600 employees in this distribution center, and with this legislation, it will help preserve these jobs, at least for the next biennium. He stated that there were differences in the retailers including personality conflicts, but there are mechanisms by which an individual can get the products they want.

EXECUTIVE ACTION - January 7, 1987 - 11:00 a.m.

ACTION ON HOUSE BILL NO. 41

Representative Cohen moved that House Bill No. 41 DO PASS.

A substitute motion that House Bill 41 DO NOT PASS was made by Representative Wallin.

Representative Brandewie moved to amend House Bill No. 41 as follows: on page 1, line 22, strike "appropriate" and replace with "actuarially justified". The motion carried unanimously.

Representative Pavlovich moved to further amend the bill as follows: on page 2, line 5 and line 25, instead of "3 years" insert "2 years". The motion carried with Representative Cohen voting against.

Representative Wallin moved that House Bill No. 41 DO NOT PASS AS AMENDED. The motion failed.

activated is at the direction and control of the chief of police or the sheriff of that department.

CLOSING

Representative Kitselman stated that there is a basic difference in the philosophy, law enforcement personnel are given the power to arrest, and the private security personnel are there to observe and report. He said that a lot of businesses do prefer the off-duty officer because they have the badge, the firearm, and the representation of the total law enforcement department. He stated that when the law enforcement people and the private security are bidding on the same contracts, it is difficult for the private sector to compete when they have to supply to own vehicles, uniforms, radios and controls, and the most of all the liability insurance policy. He stated also the concern of the impact on the jobs for the private security sector, who are taxpaying citizens and taxpaying corporations.

EXECUTIVE ACTION - January 9, 1987 - 9:30 a.m.

ACTION ON HOUSE BILL NO. 30

Representative Glaser moved that House Bill No. 30 DO PASS.

Representative Glaser moved to amend House Bill No.30. The motion carried unanimously.

Representative Pavlovich moved a further amendment to basically restrict the bar owners and taverns that have beer, wine, or an all-beverage license to supply in event of a strike. Motion carried unanimously.

Representative Wallin moved a further amendment to House Bill No. 30 which would open it up to all licenses. Motion failed.

Representative Brandewie moved that a "severability" clause be inserted in the bill. Motion carried unanimously.

The original motion by Representative Glaser that House Bill No. 30 DO PASS AS AMENDED was voted on. Motion carried with Representatives Thomas and Pavlovich voting no.

ADJOURNMENT

Meeting adjourned at 9:50 a.m.

REP. LES KITSELMAN, Chairman

WITNESS STATEMENT

#3

1/7/87

B-30

NAME Chuck Lee BILL NO. HB30
ADDRESS Lee Distributing Co. (Miller, Rainier, Strohs) DATE 1/7/87
WHOM DO YOU REPRESENT? Mont. Beer & Wine Wholesalers Assn.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

My company serves 318 retailers in Flathead and Lincoln Counties, 292 of which are open all year. We call on 275 of them at least once a week, and the remainder in outlying areas like Polebridge and Taak, we serve bi-weekly or on call.

I am also including the order form our salesmen use. This shows how we can offer the imported beers and other low-volume brands ~~which~~ to each account ~~which~~ as well as our main brands - Miller, Rainier, Strohs.

CARD 11 21-1
DATE 1/2/92
HB 30

DATE _____
Recap

NAME OF
CUSTOMER

Rainier

11 12 15 20 25 30 35 40 45 52 55 60 65

NEAR 1/4 1/2 Lse 16 M. 12/11 Ale Pts
BEER 1/4 1/2 Can CP 4/8 NR oz. Qt. Malt

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WITNESS STATEMENT

NAME Ardelle Watking BILL NO. HD 30
ADDRESS Gusto Distr. of Havre (Miller, Rainier Streets) DATE 1/7/87
WHOM DO YOU REPRESENT? Montana Beer & Wine Wholesalers Assn.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

BUSINESS AND LABOR

BILL NO. HB 30

DATE January 7, 1987

SPONSOR Representative Les Kitselman

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan 9, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN		✓	
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET		✓	
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

Date: 1-7-01

Time: 4:30 pm

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

House Standing Committee on Business & Labor

Amendments # 2 + #3

"all - beverages"

Amendment #1

"[this act]"

Lee Mitchell

Sponsor

Secretary of Senate
or
Chief Clerk

MER
Legislative Council

MONTANA STATE SENATE
BUSINESS AND INDUSTRY COMMITTEE

50TH LEGISLATURE

COMMITTEE MEMBERS:

Senator Allen C. Kolstad, Chairman
Senator Ted Neuman, Vice Chairman
Senator Paul Boylan
Senator Delwyn Gage*
Senator Tom Hager
Senator Harry H. McLane
Senator Darryl Meyer
Senator Gene Thayer
Senator Mike Walker
Senator Cecil Weeding
Senator Bob Williams

STAFF ATTORNEY:

Mary McCue

COMMITTEE SECRETARY:

Carolyn A. Linden

*Sen. Gage was unable to attend most of the meetings due to a
conflict with other committees. He was replaced by Sen. Hager.

BOOK:

ONE OF THREE

INCLUSIVE DATES: 1/6/87 THROUGH 2/6/87

CHAIRMAN--SEN. ALLEN C. KOLSTAD
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-CAROLYN LINDEN

BILL NO--	REFER DATE--	HEARING DATE--	CONSIDERATION DATES--	COMMITTEE ACTION--	REREFERRED TO COMM--	DATE OUT--
HB0022	1/13	1/20	1/20/87	CONCUR		1/20/87
HARPER, HAL			CLARIFY NOTICE REQUIREMENTS ON DISPOSITION OF COLLATERAL AFTER DEFAULT			
HB0030	1/21	1/29	1/29/87	CONCUR		1/29/87
KITSELMAN, LES			RESPONSIBILITIES OF BEER WHOLESALER			
HB0031	1/22	1/29	1/29/87	CONCUR		1/29/87
KITSELMAN, LES			CHANGING COMPOSITION OF PRIVATE SECURITY PATROLMEN AND INVESTIGATORS BOARD			
HB0034	1/12	1/16	1/16/87	CONCUR		1/16/87
SPAETH, GARY			APPLICANT FOR BARBER INSTRUCTOR CERTIFICATE MUST BE LICENSED BARBER			
HB0041	1/21	2/06	2/6/87	CONCUR		2/6/87
WINSLOW, CAL			CREATE MATURE DEFENSIVE DRIVING ACT; REDUCE PREMIUM RATES OVER AGE 55			
HB0066	3/02	3/16	3/16/87	CONCUR		3/16/87
PAVLOVICH, BOB			LICENSING MANUFACTURERS AND DISTRIBUTORS OF VIDEO POKER MACHINES			
HB0067	2/03	3/04	3/4/87; 3/5/87	CONCUR AS AMENDED		3/5/87
PAVLOVICH, BOB			GENERALLY REVISE VIDEO MACHINE CONTROL ACT OF 1985			
HB0068	1/22	1/29	1/29/87; 1/30/87; 2/4/87 2/5/87 2/10/87	CONCUR AS AMENDED		2/10/87
KITSELMAN, LES			REVISING SECURITY PATROLMEN AND INVESTIGATORS LAW			
	1/27	2/10	2/10/87; 2/13/87	CONCUR AS AMENDED		2/13/87
			NEWSPAPER CARRIER OR CORRESPONDENT NEED NOT HAVE WORKERS' COMPENSATION			
		3/11	3/11/87	CONCUR		3/11/87
			MAKE MEMBERSHIP IN RATING ORGANIZATION OPTIONAL FOR STATE WORKERS' COMP FUND			
HB0046		1/30	1/30/87; 2/6/87	CONCUR		2/6/87
RAMIREZ			ALLOWING A FARM MUTUAL TO INSURE LIABILITY RISKS			

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

January 29, 1987

The eleventh meeting of the Business and Industry Committee was called to order by Chairman Allen C. Kolstad at 10:00 a.m. on Thursday, January 29, 1987, in Room 410 of the Capitol.

ROLL CALL: All committee members were present except Sen. Delwyn Gage, Sen. Ted Neuman, and Sen. Mike Walker who were excused.

CONSIDERATION OF HOUSE BILL NO. 30: Representative Les Kitselman, House District 95, Billings, is the chief sponsor of this bill. Because Rep. Kitselman was delayed due to executive action in another committee hearing, he requested that Mr. Roger Tippy, Executive Secretary of the Montana Beer & Wine Wholesalers' Association introduce HB 30. Mr. Tippy stated that there were several persons in attendance who would like to testify in favor of HB 30; therefore, they would testify first and then he would present his testimony and be available for questions.

PROPONENTS:

Mr. Bill Watkins representing the Montana Beer & Wine Wholesalers Association, Missoula, testified in support of HB 30. (EXHIBIT 1)

Mr. Don Brocopp, Intermountain Distributing Co., Billings, urged the Committee's support of HB 30. (EXHIBIT 2)

Ms. Ardelle Watkins, spoke in favor of HB 30. She stated that the beer distributors in Montana are concerned that if the interpretation (by the Revenue Department) allowing trans-shipping continued, many distributors would be forced out of business. She noted that trans-shipping has been happening in Indiana for the last several years and out of 140 wholesalers, there are presently 115. They anticipate that there will eventually be only 50 remaining. She explained that distributors employ over 600 persons in the State. In Montana, 85% of the jobs are lost, historically, if a business merges with another. Mergers often take place when a business is about to go out of business. She urged the Committee's support of HB 30.

Mr. Pete Decker, Fred Briggs Distributing, Billings, spoke in favor of HB 30 and urged the Committee's support. (EXHIBIT 3)

Mr. Robert Zucconi, Zeke's Distributing Co., Helena, stated that he was in favor of HB 30 because they are responsible for picking up and destroying of off-flavored beer. He explained that their companies are small in Montana and they carry a variety of products. He also feels that if HB 30 is not passed, Montana will see the elimination of many small companies. He urged the support of the Committee for HB 30. (EXHIBIT 4)

Mr. Robert Tippy, Attorney and Executive Secretary for the Montana Beer & Wine Wholesalers' Association testified in favor of HB 30 and urged the Committee's support. (EXHIBIT 5)

Mr. Dan Holt, Attorney, Helena, Representing Anheuser-Busch stated that Montana has always had a three-tier system and they believe that HB 30 with the restrictions on transfer from premise to premise and the restrictions on dock sales, strengthens and clarifies the three-tier system which the Montana Legislature has already approved, therefore they would support HB 30.

OPPONENTS: There were no opponents to HB 30.

DISCUSSION OF HOUSE BILL 30: Chairman Kolstad opened the discussion of HB 30 by asking Mr. Tippy to explain the provision making it unlawful for a licensed retailer to transport from one premise to another. Mr. Tippy stated that the present law states that a tavern or independent little grocer may not buy beer from another retailer which is already in the law. There might be occasions where that goes on; for instance, a small grocer may be out of a certain brand late on a weekend night and rather than wait for a truck to come 75 miles, that grocer may borrow the small amount he needs until the distributor is able to come. The department, however, has interpreted the situation whereby one corporation which owns a number of outlets, can transport beer back and forth between their stores legally because there is no transfer of ownership, even though it transfers from one license to another. The Association feels that the Department of Revenue should treat each license independently. Therefore, they should all be subject to the same requirement whether they are part of a chain or whether they are an independent such as a tavern or a mom and pop shop. The amendments just extend the present law into the chain outlet situation.

Sen. Weeding wanted to know how the identity of beer would be maintained if Super America, in Sidney for some reason

or another wanted to transport part of their stock to a branch in Eureka. How is that wholesaler who is supposed to check and verify that stock every seventy-five days going to know where that stock went to or is some other wholesaler going to check that stock. Mr. Tippy answered that the Kalispell wholesalers would be responsible for that territory, and if SA had trucked a number of cases of beer from Missoula up to Flathead County, the wholesaler in Kalispell has the obligation and the wholesaler in Missoula who sold it has no obligation to pick it up if it is stale and needs to be removed and destroyed or whatever. The Kalispell wholesaler may have a suspicion when he finds he hasn't been selling as much as usual to a particular account, but there is no coding on the beer cans so that just anyone could identify them.

Sen. Thayer asked if there would be a loss of revenue if the bill were not passed and the practices continued. Mr. Tippy answered that such situations could arise. The Department of Revenue does enforce one aspect of the wholesalers responsibility with the "come to rest" requirement that beer shipped in from out of state must come to rest in some wholesaler's warehouse, however briefly, and have the taxes paid upon it. When the arrangements such as happen in Indiana where it comes to rest very briefly and then speeds on its way to a super market distribution center, it begins to take more and more effect, and there are opportunities to lose that excise tax. The difference of wages, \$19,000 being what Professor Polzin figured as the average wage of the wholesaler in this industry, compared to about \$9,000 in retail and the difference in property taxes and others paid by wholesalers would be losses to the State as fewer and fewer firms survive because of the present situation.

The hearing was closed on HB 30.

EXECUTIVE ACTION ON HOUSE BILL 30: Sen. Williams made a MOTION that HB 30 BE CONCURRED IN. The motion was seconded by Sen. Thayer. The MOTION PASSED UNANIMOUSLY.

CONSIDERATION OF HOUSE BILL NO. 31: Representative Les. Kitselman, House District 95, Billings, is the chief sponsor of this bill. Rep. Kitselman requested that Mr. Robert B. Evans, Timberline Investigations, Kalispell, present HB 31 in his absence. Mr. Evans stated that when the Legislature completely revised the law and created the Board of Private Security Investigators during the forty-eighth legislature in 1983, it caused confusion

ROLL CALL

BUSINESS & INDUSTRY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1/29/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN			✓
PAUL BOYLAN	✓		
DELWYN GAGE			✓
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER			✓
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

DATE

1/29/87

COMMITTEE ON

Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Alben	MR. Richard Allen	HB 68	✓	
BERT L. CLAUSEN	CLAUSEN DIST.	HB 30	✓	
Don	Dept of Revenue	HB 30	—	—
Roger Tupper	MBWA	HB 30	✓	
Clayton Bain	Board of P.I. & Private Security	HB 30	✓	
herb E. Evans	MT. Assoc. P.I. & Security	HB 31 HB 68	✓	
m DuPont	MSPOA	HB 30	?	
LY HARBAUGH	MSPOA	HB 30		
ing A. Dupuis	MPASO	HB 68 HB 31		
Sam	ZEKE'S DIST.	HB 30	✓	
Don Bragg	Intermountain Dist	30	✓	
Blair	Zip Bev Mfg	HB 31	✓	
Mr. Morgan	Self	HB 31 68	✓	
te Necker	Don Bragg Dist Co.	HB 30	✓	
IAN HOVEN	Antikarsen Busch	HB 30	✓	
Mr. Anderson	Antikarsen Busch	HB 30	✓	
ert, Zuccovi	ZEKE'S Dist Helon	HB 30	✓	
ngels	Mt. Chamber of Commerce	HB 68	Amendments	
edelle Ketting	Dist Beer & Wine Wholesalers	HB 30	✓	
Am Delano	BN Inc	31 68	✓	
ill Mtz	Coors County	HB 30	✓	

(Please leave prepared statement with Secretary)

EXHIBIT NO. 1DATE 1/29/87BILL NO. HB 30

WITNESS STATEMENT

NAME Bill WatkinsBILL NO. 30ADDRESS 1200 Shakespeare, Missoula, Montana 59801DATE 1-07-87WHOM DO YOU REPRESENT? Montana Beer & Wine Wholesalers Assn.SUPPORT XOPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Comments:

1. A state law enacted in 1974 (code sections 16-3-221 and 16-3-222, see Exhibit A on the back of this statement) requires each brewery licensed to operate in Montana to appoint its wholesalers with the sole rights to distribute some or all of its brands of beer in a designated territory.
2. My company, Zip Beverage, holds such appointments from several breweries or importers for all or parts of six counties in the Missoula area. Our Anheuser-Busch, Inc. equity agreement (see Exhibit B attached to this statement) makes us responsible for distributing the Budweiser and Michelob beer brands in all of Missoula, Ravalli, Mineral, Sanders, and parts of Lake and Powell counties. By virtue of the law I mentioned, all beer wholesalers in Montana hold similar territorial appointments for their beer brands. There is no such law for the wines we carry.
3. Beer is a perishable product. The breweries code the date a can of beer is filled on the bottom in order that its shelf life can be determined. The wholesaler, in turn, is required to look at the code and see that that can is off each retailer's shelf within 90 to 110 days after the fill date. If we don't pull the old beer the consumer and the brand's reputation is harmed. Without the territorial franchise, quality control is impossible. The territorial responsibility system serves the public, but we need House Bill 30 to continue to provide quality beer to satisfied consumers.

- (a) sell and deliver beer to:
- a vendor;
 - any licensees who are entitled to purchase beer from a brewer under this code; or
 - the public; or
- (b) provide, without charge, its own products for consumption on licensed premises; or
- (c) do any one or more of such acts of sale and delivery of beer.

(2) No additional license fee may be imposed on a brewery providing without charge, its own products on its licensed premises for consumption at the premises.

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; re-en. Sec. 2815, R.C.M. 1935; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969; amd. Sec. 1, Ch. 421, L. 1971; Sec. 4-317, R.C.M. 1947; amd. and redes. 4-3-206 by Sec. 53, Ch. 387, L. 1975; R.C.M. 1947, 4-3-206; amd. Sec. 2, Ch. 149, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (1)(b) and (2).

16-3-215 through 16-3-220 reserved.

16-3-221. Illegal acts by brewers or beer importers. It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

- coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state or any rules promulgated by the department;
- sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;
- designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and
- cancel or terminate, except for just cause or in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving the classification was reasonable and not arbitrary. After July 1, 1974, the provisions of 16-3-221 through 16-3-226 shall be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business

the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer.

History: En. 4-317.2 by Sec. 1, Ch. 322, L. 1974; Sec. 4-317.2, R.C.M. 1947; redes. 4-3-207 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-207; amd. Sec. 8, Ch. 19, L. 1985.

Compiler's Comments

1985 Amendment: Inserted "or beer importer" in 11 places with minor variations in phraseology.

16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler shall specifically set forth or contain the following:

- that the brewer or beer importer or any officer, agent, or representative of any brewer or beer importer and the wholesaler involved

determine the size or extent of the territory in which the products of the brewer or beer importer will be sold.

Said territory will be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer importer.

- the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

- that the brewer or beer importer recognizes that the wholesaler is free to manage his business in the manner the wholesaler deems best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands he wishes to handle, to determine the effort and resources the wholesaler will exert to develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;

- a procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer or beer importer of said deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct said deficiencies, and that a reasonable period of time shall be given the wholesaler for rectification of said deficiencies prior to any notice of intent to terminate;

- a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise.

History: En. 4-317.3 by Sec. 2, Ch. 322, L. 1974; Sec. 4-317.3, R.C.M. 1947; redes. 4-3-208 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-208; amd. Sec. 9, Ch. 19, L. 1985.

Compiler's Comments

1985 Amendment: Inserted several references to "beer importer" and to "wholesaler and beer

importer" after "brewer" and "wholesaler and brewer".

16-3-223. Transfer of wholesaler's interest in business. A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person or to one or more members of his family or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation. Provided, however, the consent of the brewer or beer importer in

Anheuser-Busch, Inc.

Wholesaler Equity Agreement

Commencing on the date on the signature page on which Anheuser-Busch executes this Agreement, Anheuser-Busch, Inc. ("Anheuser-Busch") agrees to sell and the undersigned Wholesaler ("Wholesaler") agrees to buy such malt beverage products as are listed on the Wholesaler Information Sheet, Exhibit 1 hereto (such malt beverage products being herein referred to as "Products"), pursuant to the following terms and conditions:

1. TERRITORY

(a) Anheuser-Busch and Wholesaler recognize and agree that it is essential to their mutual objectives under this Agreement that Wholesaler at all times maintain the financial and competitive capabilities necessary to achieve efficient and effective distribution of Anheuser-Busch Products in Wholesaler's sales area and to assure continued protection of the high quality and integrity of Anheuser-Busch Products. In order to:

(i) enable Anheuser-Busch and Wholesaler to more effectively compete with the products of other brewers in Wholesaler's sales area;

(ii) assure that the quality and integrity of Anheuser-Busch Products are constantly maintained recognizing that such Products are perishable, that it is vitally important that over-age Products not be permitted to reach consumers and that such Products must at all times be handled properly;

(iii) induce and enable Wholesaler to make such investments in its operation and facilities as may be necessary or appropriate to maintain and enhance efficiency and effectiveness in Wholesaler's overall marketing efforts;

(iv) induce and enable Wholesaler to engage in marketing, advertising and promotional efforts in Wholesaler's sales area, provide full customer services, achieve maximum representation of all Anheuser-Busch Products in all licensed accounts in Wholesaler's sales area and actively promote and aggressively market the full range of Anheuser-Busch Products which are the subject of this Agreement;

(v) assure that Wholesaler develops and maintains adequate and effective local community relations and exercises full responsibility to the community in its operations;

(vi) foster, promote and maintain an efficient, viable and financially sound system of distribution of Anheuser-Busch Products to the benefit of Anheuser-Busch, its wholesalers and all purchasers of the Products; and

(vii) facilitate and enable compliance by Wholesaler with the Operating, Sales and Merchandising Standards set forth in Exhibit 9,

Anheuser-Busch and Wholesaler agree as follows:

Anheuser-Busch hereby appoints Wholesaler as the wholesale distributor of, and grants to Wholesaler the right to sell, the Products in the territory described in Exhibit 2 ("Territory") and agrees that it will not appoint another wholesaler for the Products sold by Wholesaler in the Territory. As used herein, the term "Wholesaler" shall not include any person or entity who is engaged exclusively in the sale of the Products for consumption outside the United States. Wholesaler hereby accepts said appointment and agrees to exercise its best efforts to promote, sell and service the Products in the Territory. Wholesaler agrees that it will not sell Products directly or indirectly to customers located outside the Territory; provided, however, that Wholesaler may, subject to the approval of Anheuser-Busch, sell Products to customers located in another wholesaler's territory if that wholesaler is unable for any reason to service its territory. Any breach of the provisions of the immediately preceding sentence shall give Anheuser-Busch the right to terminate this Agreement immediately in accordance with the provisions of paragraph 6 hereunder. Nothing contained herein shall prevent Wholesaler from selling Products to another duly authorized Anheuser-Busch wholesaler for the purpose of eliminating product shortages or inventory imbalances.

(b) If any of the provisions of subparagraph (a) above are or shall be prohibited under any lawful statute or regulation of any state, such provisions of subparagraph (a) shall not apply in such state and, in lieu thereof,

the provisions of this subparagraph (b) shall apply. In such event, Anheuser-Busch hereby appoints Wholesaler as the wholesale distributor of, and grants to Wholesaler the right to sell the Products in the Territory as Wholesaler's primary market area. Wholesaler hereby accepts said appointment and agrees to exercise its best efforts to promote, sell and service the Products in the Territory and further agrees that it shall be primarily responsible for servicing retail accounts in its primary market area with the Products and that it shall concentrate its efforts in that primary market area.

2. MANAGER OF WHOLESALER'S BUSINESS

Malt beverages are unique products sold at retail establishments for consumption off-premise and on-premise. Wholesaler relies upon Anheuser-Busch for the production of quality Products, for support in consumer advertising of such Products, and for the counsel and advice of Anheuser-Busch's field personnel in support of Wholesaler's efforts to achieve maximum market representation of Anheuser-Busch Products in Wholesaler's Territory. The sale of malt beverages requires highly personalized promotion and sales service efforts. Anheuser-Busch relies upon the personal efforts and capabilities of the manager of Wholesaler's operation to aggressively promote, sell and service Anheuser-Busch's Products. (The business of selling malt beverages at wholesale has generally proved to be more successful when the manager of such business has at least some ownership interest.) The parties therefore agree that this is a personal service contract and is entered into by Anheuser-Busch with Wholesaler in reliance upon and in consideration of the personal qualifications of the person identified on the Wholesaler Information Sheet, Exhibit 1 hereto, as Manager of Wholesaler's business.

Nothing contained in this Agreement shall be interpreted as giving to Manager any right to be retained in Wholesaler's employ or as interfering with or limiting the right of Wholesaler at any time in its sole discretion (without obtaining the approval of Anheuser-Busch) to terminate the employment of Manager or to change Manager's duties so that he is no longer managing the business. However, any such action by Wholesaler shall constitute "cessation of employment" of Manager as that term is used in paragraph 3(f) of this Agreement and shall impose on Wholesaler the obligation to follow the procedures set forth in paragraph 3 with respect to the designation of a Successor-Manager.

3. DESIGNATION OF SUCCESSOR-MANAGER

It is important to both Wholesaler and Anheuser-Busch that at such time as Manager becomes unable to or ceases to manage Wholesaler's business, there be a person available to assume the management of Wholesaler's business. In order to plan for such a contingency and to provide for continuity in the on-going management of Wholesaler's business involving the sale of Anheuser-Busch's Products, the parties agree to be governed by the following procedures:

(a) On the Wholesaler Information Sheet, which is attached hereto as Exhibit 1, Wholesaler has designated a Successor-Manager who, in Wholesaler's judgment, would be capable of managing Wholesaler's business at such time as Manager becomes unable or ceases to do so. Wholesaler may request a waiver of this requirement by submitting a statement to Anheuser-Busch which sets forth the specific reasons why such waiver is requested. Any such request for a waiver shall be submitted by Wholesaler at the time it returns this Agreement, signed by Wholesaler, to Anheuser-Busch. By signing this Agreement, Anheuser-Busch has approved such designation or, if no such designation is made, waived this requirement for what, in Anheuser-Busch's sole judgment, is good cause.

(b) In the event Manager becomes unable or ceases to manage Wholesaler's business, Wholesaler shall immediately notify Anheuser-Busch of said fact and the Successor-Manager shall immediately become Manager. If at any time Wholesaler does not have a Successor-Manager who has been approved by Anheuser-Busch, Wholesaler shall immediately notify Anheuser-Busch and, unless waived in writing by Anheuser-Busch for what, in Anheuser-Busch's sole judgment, is good cause, shall appoint a Successor-Manager in accordance with the procedures set forth in Exhibit 3.

WITNESS STATEMENT

NAME Don Broopp BILL NO. HB-30
ADDRESS 1841 Forest Park Drive DATE 1/29/87
WHOM DO YOU REPRESENT? Intermountain Distributing Co
SUPPORT ☒ OPPOSE ☐ AMEND ☐
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The 3-tier marketing system for beer, set up by the legislature in 1933 and bolstered in 1974, was threatened just two years ago when the Department of Revenue was prepared to issue an interpretation of these laws to the Buttreys supermarkets. Mr. La Faver was on the verge of approving a Buttreys plan to store large quantities of a particular brand of beer on the floor of Buttreys' food warehouse in Great Falls and distribute this beer to the chain's 25 stores statewide through its fleet of grocery trucks.

We beer wholesalers protested long and loud against this interpretation. We put 10,000 petition signatures against this plan on Mr. La Faver's desk. Eventually, a temporary compromise was reached. A beer wholesaler in Butte agreed to warehouse this particular brand, Alpha Beta, for Buttreys, and to ship it to each of the chain's outlets by common carrier or in his own beer trucks. The Department of Revenue agreed to withhold its proposed interpretation until this session of the legislature had a chance to clarify the law. That is what I am bringing before you in House Bill 30. Please give this bill your "do pass" recommendation.

Pete Decker
Billings, MT



SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 1/29/87

BILL NO. 747330

January 28, 1987

1. Our Company has 23 employees. Payroll 1986 - 649,021.
2. We represent Miller Brewing Co., Olympia and Hamm's brands of beer. There are 56 packages in our beer inventory.
3. Also, we represent 54 wineries with 866 packages in our wine inventory.
4. We distribute beer and wine to 418 licensed accounts (city 260 - country 158) in 8 counties (see map). of the 418 accounts 263 are on premise and 155 are off premise.
5. All city accounts are delivered at least once per week - major accounts twice and sometimes more per week.
6. We have 8 country routes - three (Laurel, Red Lodge, Hardin) are delivered weekly, five routes (Bridger, Columbus, Absarokee, Harlowton, Loundup, Hysham) are delivered every other week.
7. We pre-sell 95% of our accounts.

Domestic and Imported Beers. Fine Wines.

3915 1st Avenue South P.O. Box 1514 Billings, Montana 59103 406 252-2878



Hamm's

ZEKE'S DISTRIBUTING CO. HELENA, MONTANA 59624

BOX 145

1201 N. Ewing

442-7249

SENATE BUSINESS & INDUST

SOLD TO

DATE

EXHIBIT NO. 4

DATE 11-9-12

ADDRESS

REC'D BY

BILL NO. 71330

	PACKAGE	QTY	PRICE	AMOUNT
P	1/2 BBL. DEP.			
A	1/4 BBL. DEP.			
B				
S	4/6 N.R.			
T	4/6 CAN			
	12/12 CAN			
	LIGHT 1/2 BBL. DEP.			
	4/6 CAN			
	1/2 BBL. DEP.			
O	1/2 BBL. D. DEP.			
L	1/4 BBL. DEP.			
Y	QUARTS			
M	EXPORT			
P	4/6 N.R.			
I	12/12 CAN			
A	4/6 CAN			
	16 OZ. CAN			
	LIGHT 4/6 CAN			
	12/12 CAN			
	GOLD 4/6 CAN			
H	QUARTS			
A	4/6 CAN			
M	12/12 CAN			
M	16 OZ. CAN			
S				
	LIGHT 4/6 CAN			
	BUCKHORN 4/6 CAN			
	LIGHT 4/6 CAN			
	MAXX 4/6 CAN			
I	GUINNESS ST.			
M	1/2 BBL. GUINNESS ST.			
P	BASS ALE			
O	1/2 BBL. BASS ALE			
R	HARP LAGER			
T	ST. PAULI LT			
S	ST. PAULI DK			
	MOLSON GOLD			
	MOLSON ALE			
	DOS EQUIS			
	SOL			
	MOOSEHEAD			
	PILS. URQUELL			
	FOSTER LAGER			
	GROLSCH			
	1 LITER DINKEL ACKER			
	DINK. LT			
	DINK. DK			
	KILLIANS			

	PACKAGE	QTY	PRICE	AMOUNT
	1/2 BBL. DEP.			
S	1/4 BBL. DEP.			
T	QUARTS			
R	EXPORT			
O	4/6 N.R.			
H				
	12/12 CAN			
S	4/6 CAN			
	16 OZ. CAN			
	7 OZ. N.R.			
	LIGHT 1/2 BBL. DEP.			
	4/6 N.R.			
	4/6 CAN			
	SCHLITZ 4/6 CAN			
	MALT 4/6			
OLD	QTS.			
M	4/6 CAN			
I	12/12 CAN			
L	LIGHT 4/6 CAN			
	LIGHT 12/12 CAN			
	SCHAEFFER 4/6 CAN			
	12/12 CAN			
	LIGHT 4/6 CAN			
	1/2 BBL. DEP.			
C	1/4 BBL. DEP.			
O	QUARTS			
O	EXPORT			
R	4/6 N.R.			
S	12/12 CAN			
	4/6 CAN			
	16 OZ. CAN			
	1/2 BBL. DEP.			
	LIGHT 4/6 N.R.			
	4/6 CAN			
L	4/6 N.R.			
U	4/6 CAN			
C	12/12 CAN			
K	NEAR BEER			
Y				
C	PINTS @			
R	N.R. @			
E	1/4 BBL. @			
D	1/2 BBL. @			
I				
T				

I HEREBY ACKNOWLEDGE RECEIPT OF THE ABOVE LISTED BEER AND I AGREE TO PAY CASH FOR SUCH BEER WITHIN 7 DAYS FROM THE DATE HEREOF, IN CONFORMITY TO MONTANA LAWS.

REC'D ON ACCOUNT

\$

TOTAL CREDITS

AMOUNT DUE 7 DAYS

TOTAL CHGS. TO

SOLD BY

(AGENT)

CHECK NO.

STANDING COMMITTEE REPORT

JANUARY 29, 1987

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY
having had under consideration HOUSE BILL No. 30

THIRD reading copy (BLUE)
color

KITSELMAN (TRAYER)

RESPONSIBILITIES OF BEER WHOLESALER

Respectfully report as follows: That HOUSE BILL No. 30

BE CONCURRED IN

~~XXXXXX~~
~~DO PASS~~

~~XXXXXX~~
~~DO NOT PASS~~

.....
SENATOR KOLSTAD, Chairman.

HOUSE JOURNAL
OF THE
Fiftieth Legislature
OF THE
STATE OF MONTANA
VOLUME I

STATE LAW LIBRARY
SEP 29 1987
OF MONTANA

Held in Helena, the Seat of Government
Commencing in Regular Session January 5, 1987
and Ending April 23, 1987

ROBERT L. MARKS
Speaker of the House

BOBBY SPILKER
Chief Clerk of the House

Rosana Winterburn
Journal Clerk

PUBLISHED BY



Montana Legislative Council

(ii) for which an annual plan of operation has been submitted to and approved by the district. The plan is subject to future review and approval by the district at its option. Any modification to the plan must have prior approval of the district."

And, as amended, do pass. Report adopted.

TAXATION (Ramirez, Chairman):

2/16/87

HB 565, introduced bill, be amended as follows:

1. Title, line 7.

Following: "PURPOSES;"

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN APPLICABILITY DATE"

2. Page 5.

Following: line 5

Insert: "Section 3. Applicability. This act applies to tax years beginning after December 31, 1987."

And, as amended, do pass. Report adopted.

HB 634, do pass. Report adopted.

MESSAGES FROM THE GOVERNOR

The Honorable Robert Marks
Speaker of the House
State Capitol
Helena, Montana 59620

February 13, 1987

Dear Speaker Marks:

This is to inform you that I have signed House Bills No. 106, 132, 140, 153, and 176 on this date.

Sincerely,

Ted Schwinden
Governor

The Honorable William J. Norman
President of the Senate
State Capitol
Helena, Montana 59620

February 16, 1987

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Norman and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return House Bill 30, "AN ACT PROHIBITING TRANSFER OF BEER BETWEEN LICENSED PREMISES; CLARIFYING WHOLESALERS' RESPONSIBILITIES IN THE DISTRIBUTION OF BEER; DEFINING "DISTRIBUTE" WITH REGARD TO BEER AND TABLE WINE; AMENDING SECTIONS 16-3-301, 16-4-103, and 16-4-108, MCA," without my signature and recommend the attached amendments for the following reasons.

House Bill No. 30 was amended in the House by adding a new section at the beginning of the bill. Subsequent sections were renumbered. Unfortunately the internal references in Sections 3, 6, 7, and 9 were not modified to reflect the renumbering.

The Legislative Council staff has advised my staff of these incorrect references and has requested that I return the bill with the necessary amendments. The enclosed amendments correct the erroneous internal references.

I urge your concurrence in these amendments.

**Governor's Proposed Amendments
to HB 30**

1. Page 3, line 1.
Following: "sections"
Strike: "3 and"
Following: "4"
Insert: "and 5"

2. Page 5, line 13.
Following: "section"
Strike: "2"
Insert: "3"

3. Page 6, line 24.
Following: "section"
Strike: "2"
Insert: "3"

4. Page 7, line 5.
Following: "Sections"
Strike: "2"
Insert: "3"
Following: "through"
Strike: "4"
Insert: "5"

5. Page 7.
Following: line 7
Strike: "2"
Insert: "3"
Following: "through"
Strike: "4"
Insert: "5"

Sincerely,

Ted Schwinden
Governor

MESSAGES FROM THE OTHER HOUSE

House bills concurred in and returned to the House:

2/13/87

HB 98, introduced by Manuel

HB 158, introduced by Nathe

HB 172, introduced by Squires

HB 177, introduced by Jones